HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.14602 OF 2005

DATED:17.11.2005

Between:

Gatta Sambasiva Rao

… Petitioner

and

Centre for Development of Advanced
Computing, (C-DAC), a Scientific Society
of Department of Electronics, Govt. of
India, having headquarters at Pune
University Campus, Ganesh Khind,
Pune-411007, represented by the Registrar
and others.

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.14602 OF 2005

ORAL ORDER:

By the impugned proceedings of the 3rd respondent (the incumbent also impleaded by name as the 4th respondent), the petitioner, a Member of the Technical Staff of the 1st respondent-Organization at its 2nd respondent Hyderabad unit, is transferred (placed at the disposal of) to the Headquarters at Pune.

Heard Sri K.G. Kannabiran, learned Senior Counsel appearing for Mr. B. Nalin Kumar, advocate, for the petitioner and the Learned Advocate General for the respondents 1 to 3 and Smt. P. Sarada, learned counsel, for the 4th respondent.

The impugned order of transfer is challenged on only two grounds;

a. that the order of transfer issued by the 3rd respondent is invalid as the transfer from one unit to another unit or the headquarters, of a Member of the Technical Staff of the 1st respondent-Organization could be made only by the Director General and not by the 3rd respondent; and

b. that the order of transfer is actuated by *mala fides.*

The petitioner was initially appointed in 1998 as a Member of the Support Staff of the 1st respondent at the 2nd respondent office. Admittedly, the petitioner is transferable within any of the centers/offices/units/projects or any other Government Departments, statutory bodies or public sector undertakings anywhere in India or abroad. The petitioner was certified as having satisfactorily completed his probationary period as a Support Staff, by proceedings dated 24.2.2000. By another proceedings dated 20.4.2004, the petitioner was appointed as a Member of the Technical Staff. He is liable to be transferred to any of the units of the Organization, other Government Departments, statutory bodies or public sector undertakings in India or abroad. The petitioner admits that he is liable to be transferred to any unit of the 1st respondent-Organization, but contends that it is only the Director General, earlier known as Executive Director, of the 1st respondent who is competent to

transfer from one unit to another and not the 3rd respondent. This position is not controverted by the respondents.

According to the petitioner, during the course of his employment in the Organization, he perceived several grave irregularities taking place at the 2nd respondent unit and has addressed letters to several authorities regarding such irregularities. According to the petitioner, irregularities occurred in recruitment to the post of Secretary, misuse of his official position by the 4th respondent and financial irregularities. The petitioner through an E.mail dated 9.6.2005 addressed the head office specifying the irregularities committed by the 4th respondent in abuse of his official position including financial irregularities. As the impugned order dated 20.6.2005 was issued under the hand of the 4th respondent, the petitioner apprehends that his complaints to the head office and other authorities had prejudiced the 4th respondent and resulted in the 4th respondent transferring the petitioner from the Hyderabad unit to the Headquarters at Pune. This is the basis of the *mala fides* alleged against the 4th respondent apart from the contention that the 4th respondent was incompetent to have transferred the petitioner from Hyderabad to Pune.

By an order dated 7.7.2005, this court granted interim suspension of the impugned order of transfer. A counter affidavit has been filed along with an application seeking vacation of the interim order of suspension. The counter affidavit is filed by the first respondent.

The counter affidavit admits that the petitioner could be transferred at the discretion of the Director General to any of the centers of the 1st respondent in India or abroad (paras 4 and 5). With regard to the contention regarding the invalidity of the impugned order of transfer on the ground of incompetence of the 3rd respondent, the counter asserts that only the relief order from the Hyderabad unit was issued by

the impugned order and that the order of transfer was passed by the Director General by proceedings dated 17.6.2005. The impugned order is only a communication to the petitioner by the 3rd respondent informing him of the order of the Director General and that his services are placed at the disposal of the headquarters. The 3rd respondent relieved the petitioner from the Hyderabad unit only on the directions and orders of the Director General transferring the petitioner from the Hyderabad unit to the Pune headquarters, is the plea in the counter affidavit.

The proceedings of the Director General dated 17.6.2005 reads:

> *"This refers to your telephone discussions and earlier communications of May 13, 2005 with regard to the utilization of services of Mr. G. Sambasiva Rao, MTS (Emp.No.1183).*
>
> *In view of his no significant contribution at C-DAC Hyderabad at this stage, frequent problems arising out of group dynamics at that Centre, I have decided to call for his posting at Pune with immediate effect, pending review of all matters on his work and conduct in the Hyderabad Centre.*
>
> *I hereby request you to send a communication to Head HRD, C-DAC and a copy to Mr. G.S.Rao, indicating that his services be placed at the disposal of Head HRD, C-DAC and he may report to Head HRD, C-DAC, at Pune with immediate effect."*

From the proceedings of the Director General dated 17.6.2005, it would appear that pursuant to the telephonic discussions, and an earlier communication on 13.5.2005 between the 3rd respondent and the Director General, the Director General perceived that there was no significant contribution by the petitioner at the Hyderabad unit and there were also frequent problems arising out of "group dynamics" at the Hyderabad center and, therefore, the Director General decided to post the petitioner at Pune and pending review of matter connected with the petitioner's work and conduct at the Hyderabad center.

To some earlier complaints of the petitioner addressed to the Director General, the Director General, by the communication dated 7.2.2005, informed the petitioner that he had been receiving his earlier mails and was sensitized to the issues raised by the petitioner and that the Director General would ensure following of proper procedures in the selection processes.

It is not necessary in the context of this case, involving what is merely an order of transfer, to consider in greater detail whether all is well with the Hyderabad unit, the grievances urged by the petitioner with regard to the irregularities in the Hyderabad unit are correct, and whether the Director General had taken adequate notice and prompt corrective steps to identify and solve the irregularities if any in the Hyderabad unit, either generally or those arising out of any irregular conduct of the 4th respondent. This is not the province of this court in judicial review and at any rate in this writ petition.

In view of the proceedings of the Director General dated 17.6.2005, the petitioner's assertion that the order of transfer is issued by the 3rd respondent, an incompetent authority, is misconceived. In fact and reality, the order of transfer is consequent on a decision and a clear decision of the Director General, admittedly a competent authority. The impugned order is one that merely relieves the petitioner from the Hyderabad unit, of which, indisputably the 3rd respondent is the unit head. There is thus no infirmity in the order dated 20.6.2005.

The remanent issue is whether the order dated 20.6.2005 is invalid on account of *mala fides.*

The allegations of *mala fides* are made on an assumption by the petitioner that the impugned letter constitutes an order of transfer and by the 3rd respondent. It is now clear that the decision to transfer the petitioner from the Hyderabad unit office to the headquarters office at Pune is by the Director General, as is apparent from the

proceeding dated 17.6.2005. It is not the petitioner's allegation that the Director General of the Organization bore any animus against the petitioner. The Director General's proceeding dated 17.6.2005 permits a legitimate inference that the head office was of the view that no useful contribution was forthcoming from the petitioner in the Hyderabad unit. This is apart from the perception that the equilibrium in the working environment of the Hyderabad unit was also not satisfactory. Such perception of disequilibrium may have been on account of the petitioner or may not. The Director's proceedings dated 17.6.2005 does not clearly state what caused the state of "group dynamics". In any event, on such perceptions as have been recorded in the proceedings dated 17.6.2005, the Director General was administratively satisfied that transferring the petitioner from the Hyderabad unit to the headquarters was a preferred administrative choice. Such decision is eminently within the discretionary spectrum of the 1st respondent and he was also competent, as admitted by the petitioner, to order transfer of an employee from one unit to another, including to the headquarters. The mere fact that the petitioner had addressed complaints against the 4th respondent to the headquarters would not compellingly permit an inference that the alleged malice borne by the 4th respondent against the petitioner was adopted by or stood transferred to the Director General.

The petitioner is merely shifted from one unit to the another, by a competent authority and in the exigencies of normal administrative business. The allegations of *mala fides* is not established.

For the aforesaid reasons, this court finds no infirmity in the impugned order which is merely an order passed by the 3rd respondent, relieving the petitioner from the Hyderabad unit pursuant to orders of the petitioner's transfer passed by the Director General, an admittedly a competent authority.

Writ Petition is therefore dismissed. The interim order dated 7.7.2005 is dissolved. There shall however be no order as to costs.

---------- GODA RAGHURAM, J

Date: 17.11.2005

cvm